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No. 87-1936



IN THE

# Supreme Court of the United States

October Term, 1987

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OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, JOHN E. FOLEY, and JOSEPH M. MISBRENER, *Petitioners,*

v.

SINCLAIR OIL CORPORATION, a Wyoming and Delaware corporation, EARL HOLDING, individually and as Director and Officer of Sinclair Oil Corporation, J.R. McINTIRE, individually and as Refinery Manager and employee of Sinclair Oil Corporation, and JOHN DOE(S), whether singular or plural, that individual or those individuals who participated in the republishing of the defamatory statement, *Respondents.*

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## REPLY OF PETITIONERS TO RESPONDENTS' BRIEF IN OPPOSITION

The Petitioners, through their attorneys, hereby file their reply to the Brief of Respondents' in Opposition to Petition for Certiorari.

### ARGUMENT

**I. The Need for This Court to Review the Definition of Actual Malice Utilized in the Labor Dispute Defamation Context is Reenforced by Statements Made in Respondents' Opposition Brief.**

As they did below, the Respondents demonstrate in their Brief in Opposition the extreme negative feelings they harbor toward the

Petitioner, Oil, Chemical and Atomic Workers International Union ("OCAW" or "International Union") and labor organizations, in general. In Footnote 1 of the Respondents' Opposition Brief, found on pages 4 and 5, the Respondents describe their "past sad experiences with OCAW" and proceed to itemize, as they did to the courts below, a laundry list of incidents which the Respondents rely upon, at least in part, to support their belief in statements made in Dorothy Palacios' letter. As discussed below, a disputed issue of fact exists as to each and every item on the laundry list.

The Respondents have demonstrated to this Court the very point which Petitioners desire to advance and wish the Court to review. The Respondents' list of "past sad experiences with OCAW" demonstrates that they believed Palacios' letter, including the defamatory statements concerning her employment relationship with the International Union, regardless of the fact that the Respondents, as stated in deposition testimony, knew nothing about how she was treated as an employee and were well aware that she was a recently terminated, disgruntled employee with every reason to make false statements. To require the Petitioner to prove that the Respondents had a high degree of awareness of probable falsity is to place a severe burden on the Petitioners in proving their case. The Respondents demonstrate their extreme prejudice in Footnote 1, such that they likely would believe nearly any false statement about the OCAW. The standard used by the lower courts, therefore, proves to be an insurmountable burden to Petitioners and similarly situated plaintiffs.

The issue is compounded by the fact that the alleged actions set forth in Footnote 1 of the Respondents' Brief concern incidents occuring in Rawlins, Wyoming at the local union level. The officers of the International Union and the International Union, itself, were not connected with the actions itemized. Palacios' defamatory statements, however, concern International Officers and the International Union and its treatment of her as an employee. This Court has affirmed the principle that an international union is not liable for the acts of a local affiliated union absent clear involvement by the international union or ratification of the local union's action by the interntional union. *Carbon Fuel Co. v. United Mine Workers of America,* 444 U.S. 212 (1979); *Coronado Coal Co. v. United Mine Workers of America,* 259 U.S. 344 (1925).

A jury could certainly find publication on the part of the Respondents with actual malice, specifically publication with reckless disregard of the truth of the matter asserted, when presented with the fact that the primary reason the Respondents believed the letter was true surrounded matters involving only local incidents not directly connected to the defamed parties. Coupled with the fact that the individual Respondents admitted to knowing nothing about how the International Union treated its employees, this Court should grant the Writ to rectify this error.

Finally, with respect to each alleged incident described in Footnote 1, and otherwise mentioned by the Respondents in the courts below, the Petitioners have presented documents and other evidence which dispute Petitioners' involvement in any way in these incidents and even dispute that these incidents occurred as alleged. Therefore, the lower courts errored in granting a summary judgment given the genuine issues of material fact with respect to the issue of Respondents belief that the letter was true, when that belief was based upon facts completely in dispute. Petitioners have thus been denied their Constitutional right to access to courts affirmed by this Court.

## II. The Respondents Misinterpret This Court's Decision in *Linn v. United Plant Guard Workers,* 383 U.S. 53 (1966).

The Respondents, at page 9 of their Opposition Brief, assert that this Court's decision in *Linn v. United Plant Guard Workers,* 383 U.S. 53 (1966), "confirmed earlier holdings of various lower court and established an unassailable precedent for the principle that unions and union officials engaged in labor disputes are public figures, that such cases involve matters of public interest or general concern, and are subject to the standards enunciated in *New York Times Co. v. Sullivan, supra.*" (Citations omitted).

The Respondents do not understand this Court's reasoning in applying the actual malice standard by analogy, rather than constitutional compulsion, to defamation actions arising out of a labor dispute. This Court in *Linn did not* establish the principle that unions and union officials engaged in labor disputes are

public figures. The decision also *did not* establish the principle that labor dispute defamation cases are cases involving matters of public interest or general concern. Indeed, Petitioners are arguing to this Court that the standard to be applied in a labor dispute context is different than the standard applied in cases involving public figures and matters of public interest or general concern. The Court has not defined reckless disregard in the context of a labor dispute, republication matter. Therefore, it is appropriate for the Writ to be granted.

### III. The Respondents Inaccurately State to This Court That the Wyoming Supreme Court Dealt With Each of Petitioners' Claims That the Attorney-Client Privilege was Improperly Applied by the Trial Court.

At page 13 of their Opposition Brief, the Respondents assert that the Wyoming Supreme Court "dealt in depth with each of the Petitioners' claims that the attorney/client privilege was improperly implied by the Trial Court." As the Petitioners state in their Petition for a Writ of Certiorari, the trial court and Wyoming Supreme Court did, indeed, discuss several of the arguments advanced by the Petitioners concerning the attorney/client privilege. However, only dissenting Justice Urbigkit discussed the most important argument advanced, that being the argument of necessity.

Since the trial court and Wyoming Supreme Court were insisting that the Petitioners present evidence of publication with subjective awareness of probable falsity on the part of the Respondents in republishing the defamatory letter, it was absolutely necessary that the Petitioners be allowed to delve into the minds of the Respondents and Sinclair's agents regarding the critical decision of whether to publish the letter. Since attorney Daniel Gruender was intimately involved in every step of the critical decision, a factor which the Respondents failed to even mention in their Brief in Opposition, the rule of necessity requiring complete discovery should have been utilized by the Courts below to overcome any privilege found to be applicable. *Trammel v. United States*, 445 U.S. 40 (1980). The argument of necessity, in any

event, was not discussed by the courts below. Thus, the Respondents are incorrect in stating that the lower courts dealt with all of the Petitioners' arguments.

## IV. Contrary to the Position Taken by the Respondents, the Question of Whether a Defamatory Statement is Fact or Protected Opinion is not Generally a Question of Law But, Rather, a Question of Fact to be Determined by the Jury.

In their Brief of Opposition, the Respondents make the assertion that the determination of whether a potentially defamatory publication is protected opinion or a statement of fact is a question of law to be determined by the court, citing *Gregory v. McDonnell Douglas Corporation*, 552 P.2d 425 (Cal. 1976). The Respondents failed to point out however, that that portion of the *Gregory* decision dealing with the opinion versus fact issue had been subsequently modified by the California Supreme Court in *Slaughter v. Freedman*, 649 P.2d 886 (Cal. 1982). In *Slaughter*, the California Supreme Court holds that, unless a statement is unambiguously a statement of opinion, the matter must be submitted to the trier of fact for determination. Also, the Respondents failed to point out that virtually every court dealing with the issue of whether the opinion versus fact question should be submitted to the jury, has ruled that the matter should be submitted to the jury unless the matter is unambiguously a statement of opinion.[1]

The Petitioners would urge this Court to correct the trial court's usurpation of the duties of the trier of fact in this matter. The letter constituted a statement of fact and consisted at least in part of defamatory factual statements particularly when the very authoress begins her letter with the words "there are some facts you should know." Also, affidavit evidence was submitted to the

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[1] *See, Caron v. Bangor Publishing Company*, 470 A.2d 782 (Me. 1984); *Lyons v. New Mass Media, Inc.*, 453 N.E.2d 451 (Mass. 1983); *Griffin v. Opinion Publishing Company*, 138 P.2d 580 (Mont. 1943); *Nevada Independent Broadcasting Corp. v. Allen*, 664 P.2d 337 (Nev. 1983); *Pease v. Telegraph Publishing Company, Inc.*, 426 A.2d 463 (N.H. 1981); and *Marchiondo v. Brown*, 649 P.2d 462 (N.M. 1982).

lower courts from individuals who actually received the letter the day it was distributed to Sinclair employees who believed when they read it that the letter contained statements of fact. Summary judgment was improper in this case inasmuch as the lower courts improperly applied this Court's "protected opinion" theory.

Respectfully submitted,

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